

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ROBERT TIM DABNEY,

Defendant-Appellant.

UNPUBLISHED

September 30, 2003

No. 240351

Wayne Circuit Court

LC No. 01-008624

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carrying a concealed weapon, MCL 750.227, being a felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of two to five years for the concealed weapon and felon in possession convictions, and to the mandatory two-year consecutive term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

A police officer testified that he observed defendant standing in the middle of the street around midnight. The officer signaled defendant with his flashlight to get out of the street. As defendant moved to the sidewalk, the officer observed defendant reach into his pocket, remove a handgun and toss the handgun to the ground. Three other officers were present at the time but did not see defendant discard the gun. Defendant maintained at trial that the gun was planted.

On appeal, defendant argues that the trial court undermined his defense and deprived him of his right to a fair trial by limiting cross-examination. Trial judges retain wide latitude to impose reasonable limits on cross-examination based on concerns about, among other things, interrogation that is repetitive or only marginally relevant. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). Whether the trial court has properly limited cross-examination is reviewed for an abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995).

After establishing that the gun was not preserved for fingerprinting, defense counsel was precluded from asking whether this violated standard procedure. Defendant claims the response was needed to show that he was deprived of the opportunity to be absolved of the charges. However, whether this was consistent with procedure would have little bearing on whether defendant's opportunity to test the gun for fingerprints was impaired. Since defendant was able

to establish through the witness that the opportunity was lost, he in fact developed the very point he now claims he was trying to make.

Defendant also claims defense counsel should have been allowed to ask a different officer whether his claim of having observed defendant reach into his pocket during the incident was a critical fact that should have been, but was not, included in his police report. Assuming the officer would have conceded this, the enhanced impeachment value would have been slight at best. In restricting the cross-examination, the trial court was apparently expressing that, as finder of fact, it would not have found the evidence persuasive. Since defendant has not established that the court's restriction of cross-examination had any significant impact on the determination of his guilt, we find no abuse of discretion. *Minor, supra*.

Affirmed.

/s/ Michael R. Smolenski

/s/ William B. Murphy

/s/ Kurtis T. Wilder